SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 669

CLYDE J. BOWMAN, BERTRAND HOFFMAN, EUGENE DYLL, AND PENNSYLVANIA CIO COUNCIL,

Petitioners,

v.

PENNSYLVANIA STATE CHAMBER OF COMMERCE, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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v.

PENNSYLVANIA STATE CHAMBER OF COMMERCE, ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petitioners Bowman, Hoffman, Dyll, and Pennsylvania CIO Council pray that a writ of certiorari issue to review the decree of the Supreme Court of Pennsylvania entered in the case of *Pennsylvania State Chamber of Commerce, et al.*, v. *John R. Torquato, et al.* on October 1, 1956, as to which petitions for reargument were denied by that Court on October 19, 1956.

Opinions Below

The opinion of the Supreme Court of Pennsylvania is reported at 125 A. 2d 755. It has not yet been officially re-

ported and is set forth in Appendix A hereto, *infra*, p. 19. The opinion of the Court of Common Pleas of Dauphin County (R. 172 a)[1] is not yet reported.

Jurisdiction

The decision and decree of the Supreme Court of Pennsylvania were entered on October 1, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

Question Presented

Do Sections 501 (e) and 511 of the Pennsylvania Unemployment Compensation Law permitting payment of unemployment compensation benefits after full administrative hearing and consideration but before court review violate the due process clause of the Fourteenth Amendment to the United States Constitution?

Statute Involved

The pertinent provisions of the Pennsylvania Unemployment Compensation Law Act of December 5, 1936, as amended, 43 P.S. 751 *et seq.*, are set forth in Appendix B, *infra*, p. 39.

Statement

Petitioners Bowman, Hoffman, and Dyll are employees of Westinghouse Electric Corporation, herein called Westinghouse, who at all times material herein, worked at Westinghouse plants in Pennsylvania. They are members of International Union of Electrical, Radio and Machine Workers of America, AFL-CIO, herein called IUE. Pennsylvania CIO Council is a labor organization in the state of Pennsylvania.

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[1] References to the printed volume, labeled "Record", are designated "R". References to appendices to this brief are designated "App."

Between October 15, 1955 and March 20, 1956, about 16,000 Westinghouse employees in Pennsylvania represented by IUE were involved in a work stoppage (R. 23 a).

In February 1956, the Bureau of Employment Security in the Pennsylvania Department of Labor and Industry issued decisions allowing the unemployment compensation claims of employees of Westinghouse, including petitioners Bowman, Dyll and Hoffman, for a portion of their period of unemployment which it found to be due to a lockout, and disallowing the remainder of their claims (R. 27a, 136a).

Appeals from these decisions were filed with the Board of Review by Westinghouse and the claimants. The appeals were referred to a referee of the Board of Review for hearing.[2]

On March 29, 1956, Westinghouse and 71 other contributing employers to the Pennsylvania Unemployment Compensation Fund filed an action in the Dauphin County Court seeking a decree that would, *inter alia*, restrain the officials of the Commonwealth from paying compensation to any claimants until the Superior Court, which has statutory jurisdiction in such matters, U.C. Law, Sec. 510, should decide the eligibility of such claimants for benefits. The plaintiffs attacked Section 501 (e) of the Unemployment Compensation Act as violative of due process provisions of the United States and Pennsylvania Constitutions (R. 7a). Petitioners intervened and were made parties defendant to the action (R. 67a-69a; 77a).

The lower court held Sections 501 (e) and 511 of the Act to be in violation of due process of law to the extent that claimants might be paid compensation pending an appeal

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[2] Following a full hearing, at which evidence submitted by Westinghouse and the claimants was taken, the referee, on October 15, 1956, issued his decision sustaining the determination of the Bureau. The employer and the claimants appealed to the Board of Review, which has not yet decided the matter.

to the Superior Court. It ordered that no such payment should be made until there has been judicial review of the decisions of the referee and the Board of Review (R. 172a, 200a).

On appeal by the Commonwealth and the defendants, the Supreme Court of Pennsylvaia affirmed the decree of the lower court. The Court rested its decision on the ground that "the statutory provisions requiring payment of unemployment compensation prior to judicial review and prohibiting an appeal to the (Superior) Court from acting as a supersedeas, violate the due process clause of the Constitution of the United States." It concluded from a review of due process cases, " . . . particularly the above quoted and cited cases of the Supreme Court of the United States . . .", that the statutory provisions in question contravened the due process of law requirements of Section 1 of the Fourteenth Amendment of the United States Constitution and, hence, of Article I, Section 9 of the Constitution of Pennsylvania (App. A, p. 35)

Reasons for Granting the Writ

1. *The Issue Is of Major Importance to the Administration of the Federal-State Employment Security Program.*

The unemployment insurance program, now nationwide in scope, derives from federal legislation which imposes a 3 per cent excise tax on wages paid by covered employers; provides for a credit to the taxpayer of 90 per cent of this amount (or 2.7 per cent of the taxable payroll) for payments made to the state under an approved and certified state law; allows for an additional credit if an employer has been assessed less than the 2.7 per cent under experience-rating provisions which meet the requirements of the federal act; and furnishes the states with federal grants to

pay the cost of administering an aproved state law. The taxes collected by the state are transmitted to the United States Treasury and deposited to the account of the state in the Unemployment Trust Fund. 26 U.S.C. 3301, 3302; 42 U.S.C. 502, 503. Clague, *The Economics of Unemployment Compensation*, 55 Yale Law Journal 53, 55.

This legislation was enacted "to relieve the unemployed and their dependents . . ." for "the promotion of the general welfare . . ." *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 586-587. The Pennsylvania Act, like the other state, district and territorial laws, has the same purpose. Section 3 of the Law. It is important to recall that the original Social Security Act grew out of the realization that the method of providing for the unemployed through relief was "inadequate, humiliating and . . . uncertain" and that there should be "some form of insurance . . . which would give the unemployed a buffer before they were stripped of all their slender resources." Douglas, *Social Security in the United States* (1939), 20-21. Moreover, even in the absence of a depression, it is essential to maintain the system of unemployment insurance to care for the unemployed, to afford a check against a downward economic spiral, and, not least, to provide confidence and support credit buying in a consumer-based economy. Larson, *The Future of Income Insurance*, BNA Daily Labor Report 1956, No. 223, D-1, 3. Burns, *Unemployment Compensation and Socio-Economic Objectives*, 55 Yale Law Journal 1, 12.

In the light of these considerations, it is manifest that the success of the unemployment compensation program depends on effective operation of the administrative process so as to ensure prompt payment of benefits. Silverstone, *The Administration of Unemployment Compensation*, 55 Yale Law Journal 205. This is the very objective which the decision of the Court below, if left unreversed, will defeat.

Sections 501(e) and 511, in substantially their present form, have been in the Pennsylvania Unemployment Compensation Law since 1936. As in other states, claims in Pennsylvania are initially determined upon the basis of an investigation by an administrative agency, the Bureau of Employment Security. The first appeal from a decision of the Bureau of Employment Security, is usually heard by referee appointed by the Board of Review. He conducts a hearing, takes testimony and makes findings of fact and a decision. The claimant, the employer or the Bureau may take a further appeal from this decision to the Board of Review. Section 502, 43 P.S. 822. From the decision of the Board of Review, there is an appeal to the Superior Court. Section 510, 43 P.S. 830.

Under Section 501(e) the Bureau must pay benefits if the referee affirms a decision of the Bureau allowing benefits, unless within 30 days after the date of the appeal the Board of Review reverses the decision.

Under Section 501(e), and under Section 511, providing that appeal to the Superior Court shall not act as a supersedeas, the Bureau must pay benefits if the Board of Review allows them.

The Pennsylvania legislature adopted these provisions for the prompt payment of benefits upon the double allowance of claims by two administrative agencies in order that resort to judicial review would not prevent timely receipt of income by workers during their period of unemployment.

Evidencing the need for dispatch, eligibility for unemployment compensation is determined on a weekly basis. Unemployment Compensation Law, Secs. 401, 404. In Pennsylvania, 85 per cent of all benefit checks have been made available within 14 days after an eligible claim is filed.

In its brief to the Pennsylvania Supreme Court, the Commonwealth estimated that, as a result of elimination of

Sections 501(e) and 511, an employer who chose to take two administrative appeals could automatically postpone the payment of compensation almost four months, "far beyond the average five-week spell of unemployment." The employer who filed a further appeal to the Superior Court, the Commonwealth disclosed, could postpone the payment of insurance "far beyond the maximum duration of compensable unemployment even in duress cases under recessional conditions, so as to render meaningless the insurance program in such cases." The estimates were not challenged by the plaintiffs. Their significance is heightened by the statistics that during the period 1949-1955, more than 82,000 appeals were filed and heard in Pennsylvania before referees, of which more than 14,000 were further appealed to the Board of Review. It is not difficult to anticipate that the decision of the Court below will greatly increase the number of employer appeals.

The ruling below will not only cause intolerable delay in obtaining benefits. It will compel employees, in many cases, to incur the expense of a court proceeding at a time when they are least able to bear such a burden.

In short, the decision below threatens to emasculate the unemployment insurance program in Pennsylvania for large numbers of unemployed workers.

The importance of the decision must be evaluated against the fact that a total of 37 other states have statutory provisions comparable to that in Pennsylvania allowing the payment of benefits upon the basis of agency determinations and despite an appeal to court.

This legislative pattern is no accident. It springs from the assumption underlying the federal law, that the ends of the program could best be served by use of administrative rather than judicial procedures for the determination of claims and that due process confers no right on an

employer-taxpayer to challenge the allowance of claims. The criteria for certification of a state law by the Secretary of Labor include: "(1) Such methods of administration . . . as are found . . . to be reasonably calculated to insure full payment of unemployment compensation when due; and . . . (3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied . . . " 42 U.S.C. 503(a). There is no mention of any right of appeal for employers. As for employees, there is a federal requirement of judicial review. Whatever court review has been afforded employees and employers was conferred as a matter of legislative grace, not because it was thought to be constitutionally required.[3] See Social Security Board, *Draft Bills for State Unemployment Compensation of Pooled Fund and Reserve Account Types* (1937); Parker, *Administrative Law Problems in the Unemployment Insurance Program*, 8 Vand. L. Rev. 436, 444-445, 454 (1955); Pennock, *Unemployment Compensation and Judicial Review*, 88 U. Penn. Law Rev. 137, 155 (1939).

To summarize, the decision of the Court below runs counter to the fundamental policies of the federal-state unemployment insurance program. It jeopardizes similar provisions in the laws of many states. It undermines the ability of the state to pay benefits when needed, a cardinal objective of the entire federal-state scheme.

2. *The Decision Below Is Inconsistent with Decisions of the Courts of Other States.*

As stated above, about 38 jurisdictions have enacted provisions making unemployment compensation benefits pay-

[3] Employers have no right to court review with respect to cases within the coverage of the Railroad Insurance Act. Benefits are payable upon final decision of the Railroad Retirement Board. 45 U.S.C. 355. See *Railway Express Agency* v. *Kennedy*, 95 Fed. Supp. 788, aff'd 189 F. 2d 801, cert. den. 342 U.S. 830.

able, despite court appeal, where two administrative determinations, one of them by a tribunal obliged by law to make findings of fact on competent substantial evidence, have ruled in favor of the employee.

These provisions of law have infrequently been attacked on due process grounds. The Court below, in its opinion, has cited decisions from three jurisdictions in support of its constitutional holding. *Chrysler Corp.* v. *Smith*, 297 Mich. 438, 298 N.W. 87; *Chrysler Corp.* v. *Board*, 301 Mich. 351, 3 N.W. 2d 302; *Dallas Fuel Co.* v. *Horne*, 230 Iowa 1149, 300 N.W. 303; *State ex rel. Campbell* v. *State*, 223 Indiana, 59, 47 N.E. 2d 433. See Note, 53 Harv. L. Rev. 131.

On the other hand, there are now four jurisdictions where the courts have sustained double affirmative provisions as consistent with due process. *Abelleria* v. *District Court*, 17 Cal. 2d 295, 109 P. 2d 942; *State ex rel. Aiken* v. *Davis*, 131 W. Va. 40, 45 S.E. 2d 486; *Todd Shipyards Corp.* v. *Texas Employment Commission*, 245 S.W. 2d 371; *Abraham* v. *Van Meter*, Sup. Ct. Okla., Nov. 17, 19, 1956, 6 C.C.H. Unemp. Ins. Rep. Okla. ¶ 8088.[4]

The arguments in favor of constitutionality were aptly stated by the Supreme Court of California in the *Abelleria* case, supra, where the Court declared:

> "The third answer is more fundamental; the mandate contravenes the express provision of section 67 that 'if a referee affirms an initial determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken. . . .' This is one of the most significant statements in the Act. In substance it provides that when the initial deter-

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[4] The employer in this case has instituted an action before a three-judge federal court in Oklahoma to have the double affirmance provision of the Oklahoma statute declared unconstitutional. A decision is expected in the near future. *Aero Design and Engineering Co.* v. *Okla. Employment Security Commission*, Case No. 7297, U. S. D. Ct., W. D., Okla.

mination has been reviewed and approved by the intermediate appellate authority (the referee), no further delay in *payment* shall be permitted even though the issues may be still further considered in a subsequent appeal. It was designed to carry out the policy declared in section 1, St. 1939, p. 1968, of alleviating the evils of unemployment, as part of a national plan of social security in which federal and stated legislation is coupled. Sec. 2. *The very essence of the Act is its provision for the prompt payment of benefits to those unemployed.* See 88 Univ. Pa. L. Rev. 137, 139. *Any substantial delay would defeat this purpose and would bring back the very evil sought to be avoided.* The legislature recognizing the importance on the one hand of avoiding improvident payments without due consideration of the right thereto, and the danger on the other hand of withholding the payments for long periods through the slow processes of appeal to the commission and perhaps eventually to the courts, took a middle course. It provided for a preliminary appeal or review of the first determination where payments were ordered. This appeal, ordinarily decided in a short period of time, carries with it a stay. But when this second decision has also been made in favor of the applicants, the benefits begin, with protection, as already noted, for the employer in the event of later reversal.

"The proceeding instituted by the employers ignores this statutory objective, and attempts to do precisely what the statute forbids. Their position is that the challenge in a court of law of any of the numerous factual and legal determinations which the referee must make in any decision to pay benefits is sufficient cause for the statute to cease operating. They believe that to continue payments where the propriety thereof has

not yet been settled by the courts is an invasion of their legal rights. But in truth there is nothing unusual in the provision, which is in force in some thirty-six of the states." (Emphasis supplied)

The conflict of state court decisions renders review by this Court of the ruling below highly desirable.

3. *The Decision Below Necessarily Rests on a Federal Ground, Is Probably Incorrect and Is Inconsistent with Decisions of This Court.*

a. The Supreme Court of Pennsylvania adheres to the doctrine that the due process clause of the Commonwealth's Constitution is identical in scope with that contained in the Fourteenth Amendment of the United States Constitution.

Article I, Section 9 of the Pennsylvania Constitution guarantees that no person "can be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land." The Supreme Court of the Commonwealth established that the terms "law of the land" and "due process" are synonymous. *Palairet's Appeal*, 67 Pa. 479. Moreover, the same Court has adopted the view that the state's due process requirement is coextensive with the federal one. *Kariher's Petition, No. 1*, 284 Pa. 455, 470, 131 A. 265, 270; *Philadelphia Gas Works Co.* v. *City of Philadelphia*, 331 Pa. 321, 357, 1 A. 2d 156, 172.

The ruling of the Court below in the instant case necessarily rested on a federal ground. This is evident from the opinion itself. The Court's discussion of the law opens with the summary statement (App., p. 30-31):

"We agree with the lower Court that the statutory provisions requiring payment of unemployment compensation prior to judicial review and prohibiting an

> appeal to the (Superior) Court from acting as a supersedeas, violate and due process clause of the Constitution of the United States. . . ."

The conclusion that the Commonwealth constitution was also violated flowed, in the Court's view, from its holding regarding the United States Constitution. This is emphasized by the location of the sole reference to the Pennsylvania Constitution, the placing of the paragraph in which it occurs and the reliance put by the Court on the cited cases of the United States Supreme Court. Thus, the Court finished its treatment of the constitutional issues by stating (App. p. 35):

> "It is clear from the foregoing cases, particularly the above quoted and cited cases of the Supreme Court of the United States, that a statutory provision which directs that unemployment compensation in large amounts shall be made to claimants before the validity of their claims to payments are or may be determined by a Court—in this case the Superior Court of Pennsylvania—is a violation of the due process of law requirements of the Constitution of the United States and also of § 9 of Article I of the Constitution of Pennsylvania."

This Court has declared: "If a state court merely said that the Fourteenth Amendment, as construed by this Court, is 'the supreme law of the land' to which obedience must be given, our jurisdiction would seem to be inescapable". *Minnesota* v. *National Tea Co.*, 309 U.S. 551, 556. The form and language of the opinion of the Court below, as well as the rule which it follows in such cases, compel the conclusion that in reaching its decision, the Supreme Court of Pennsylvania was controlled by the construction it placed upon the Federal Constitution and upon decisions

of this Court relating thereto. In addition, the Supreme Court of Pennsylvania, as stated above, interprets the due process clause of the State Constitution to have the same meaning as that in the Federal Constitution. For these reasons, the decision below necessarily rested on a federal ground and this Court has jurisdiction to grant the writ. *Morehead* v. *New York ex rel. Tipaldo,* 298 U.S. 587.

b. The decision of the Court below is at variance with the principles of due process enunciated by this Court.

The import of the decision of the Court below is that the legislature of the Commonwealth of Pennsylvania lacks the power, by reason of the federal due process clause, to ease the impact of unemployment by paying unemployment insurance claims on the basis of administrative review and without regard to judicial review on the question of entitlement.

The United States Constitution imposes no such fetters on the power of states to cope with the serious evil of unemployment.

In *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 515, 518, this Court stated:

> ". . . We need not labor the point that expenditures for the relief of the unemployed, conditioned on unemployment alone, is a permissible use of state funds . . .
>
> The end being legitimate, the means is for the legislature to choose . . ."

Clearly, if the legislature has power to authorize payment of unemployment compensation benefits conditioned on unemployment alone, without administrative safeguards, it has power to authorize such payment upon fulfillment of additional conditions and compliance with administrative procedures. In neither case does due process entitle an employer-taxpayer to insist upon court approval as a pre-

requisite for payment. Regulation of the manner in which expenditures for a public purpose are to be made is the responsibility of the legislature, not the judiciary. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113.

It is nevertheless assumed by the Court below that the status of Westinghouse as a contributor to the Unemployment Trust Fund and the possibility that Westinghouse's contribution rate might be jeopardized by payment of the unemployment insurance benefits justify the application of due process requirements. Actually, it is only the base-year employer whom the Court below held entitled to judicial review.

In the first place, the Pennsylvania Unemployment Compensation Law permits a base-year employer, to avoid a charge against its reserve account in the event the Superior Court determines, after payment of the claims, that the claimants were ineligible. Sections 510, 4(y), 302(f). The law also affords a base-year employer an independent method of contesting any increase in its rate of contribution. Sections 301 (e) (2) and (f).

As for the Unemployment Compensation Fund, no employer has any property right in its whatsoever. The Fund belongs to the Commonwealth and exists for the benefit of eligible claimants. *Railway Express Agency* v. *Kennedy, supra,* 95 F. Supp. at 789.

Even apart from these considerations, however, the speculative increase in contribution rate that might result from payment of unemployment insurance benefits does not constitute a property right meriting due process protection. Further, any benefit which employers derive from experience-rating provisions of the law is a tax reward. Arnold, *Experience Rating,* 55 Yale Law Journal 218 (1945); *Albright Unemployment Compensation Case (Boyertown Burial Casket),* 162 Pa. Super. Ct. 98, 10-102. It gives rise

to no interest justifying protection under the due process clause. See *Slocumb* v. *Gray*, 179 F. 2d 231.

The tenuousness of the interest in question appears plain from this Court's decision in *Gange Lumber Co.* v. *Rowley*, 326 U.S. 295. The case concerned the Industrial Insurance Act of the State of Washington. The legislature had extended the time within which an injured employee might file a claim for readjustment. The employer claimed the amendment violated due process. The state industrial insurance system provided for maintenance of an accident fund paid into the treasury by employers pursuant to annual assessments. The basic rate for each year was fixed annually for each class of employers and took into account its cost experience over a two-year period and the condition of the class fund. At the same time, a premium rate for each employer was fixed with relation to the class, which took into account the employer's average cost experience over a five-year period. As the Court noted (301 U.S. at 300) "Premiums when paid are placed to the credit of the employer in the appropriate fund but become the exclusive property of the state, earmarked and appropriated for the specific uses provided by the statute."

The Court rejected the employer's contention that the award of the claim and its payment would improperly entail the payment of a higher premium in subsequent years. In this connection, the Court declared:

> "A mere increase in premium, under a compulsory and publicly administered accident insurance plan, designed to operate at cost based upon general and individual experience . . ., and surrounded with adequate procedural safeguards against arbitrary action, would not seem to be so obviously harsh or arbitrary in its effect upon employers generally that it could be said without question to be beyond the scope of the

> state's regulatory power or in violation of the due process prohibition of the federal Constitution."

The Court went on, however, to conclude that a significant increase in future rate was entirely problematical and stated (326 U.S. at 305) that the "Fourteenth Amendment, through the due process clause, does not assure protection from the states' regulatory powers against injuries so remote, contingent and speculative."

In the instant case, the injury complained of is no less speculative, both because of the uncertain operation of the experience-rating system and because relief was granted in advance of any final allowance of the claims.

Assuming, however, that an actual increase in premium had been shown to be certain or likely, the procedural safeguards against arbitrary action in the Pennsylvania law are entirely adequate. There is a full administrative hearing on the allowance of the claims. There is court review on entitlement. There is an administrative hearing and court review with respect to any determination affecting the employer's contribution rate.

No justification exists for the presumption of the Court below, even assuming that only administrative remedies were available, that due process demands judicial review as well.

As this Court said in *Reetz* v. *Michigan*, 188 U. S. 505, 507: "Due process is not necessarily judicial process." In the assessment of special taxes, this Court declared in *Hodge* v. *Muscatine County*, 196 U.S. 276, 281:

> ". . . If the taxpayer be given an opportunity to test the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a *quasi* judicial character, or before a tribunal provided by the State for the purpose

of determining such questions, due process of law is not denied."

Consistently with due process of law, the legislature may, in furtherance of the public interest, withhold a stay pending court review of administrative action. *Yakus* v. *United States*, 321 U.S. 414. Unquestionably, the gravity of the public interest in making unemployment compensation benefits available in time to ease dire need would warrant such a legislative measure.

Perhaps the most objectionable feature of the decree below is that it was granted without any showing of the likelihood of arbitrary or capricious action by the administrative agencies and before the processes of such agencies had been utilized to any substantial extent. In such circumstances, invocation of the protection of the Fourteenth Amendment is highly inappropriate. *Lichter* v. *United States*, 334 U.S. 742; *Yakus* v. *United States*, supra.

In the final analysis, the gist of the plaintiffs' contentions and of the decision of the Court below is that Westinghouse or some other base-year employer should suffer no risk of an increase in the rate of its tax contribution without judicial review.[5] This contention, however, must be raised in a proper proceeding where the issue is whether an increased rate should be assessed against the base-year employer. Then, and only then, will the employer's due process arguments be timely and relevant. Such arguments do not genuinely pertain to when the claimants may receive benefits. They relate solely to the presumed tax consequences of such payment. If the plaintiffs and the Court below are correct concerning the relationship between due process and the employer's tax liability, the employer need

[5] In point of fact, the Court below did not hold such review to be unavailable.

not fear that an increased contribution rate will be imposed without judicial sanction. See *McMillen* v. *Anderson*, 95 U.S. 37. The vice of the decision below lies in the fact that, in the guise of utilizing the federal due process clause to protect the employer's tax position, the Court intruded into an unrelated area, that of time of payment of unemployment insurance benefits. Through this misapplication of federal due process requirements, the Supreme Court of Pennsylvania undermined the effectiveness of a vital program for the care of the unemployed. This fundamental error forms a compelling reason for review by this Court.

Conclusion

For the above reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT, MAY TERM, 1957

Nos. 4, 5, 6, 7, 8, 10, 11 and 12

PENNSYLVANIA STATE CHAMBER OF COMMERCE, ET AL., *Plaintiffs, Appellees and Cross-Appellants,*

v.

JOHN R. TORQUATO, ET AL., *Defendants, Appellants and Cross-appellees*

Appeal and Cross-appeal from the Order of the Court of Common Pleas of Dauphin County at No. 2192. Equity Docket, No. 136. Commonwealth Docket, 1956

Appeal of John R. Torquato, et al. (No. 4)

Appeal of Pennsylvania Federation of Labor (No. 5)

Appeal of United Steelworkers of America (AFL-CIO) et al. (No. 6)

Appeal of Pennsylvania CIO Council (No. 7)

Appeal of International Ladies Garments Workers Union (AFL-CIO) (No. 8)

Appeal of Bertrand Hoffman, et al. (No. 10)

Appeal of Robert Kyler, et al. (No. 11)

Appeal of Pennsylvania State Chamber of Commerce et al. (No. 12)

OPINION OF THE COURT—Filed October 1, 1956

BELL, J.:

Plaintiffs filed a complaint in equity seeking an injunction to restrain defendants from paying any money out of

the Unemployment Compensation Fund until a decision on the claims of employes of Westinghouse Electric Corporation for unemployment compensation is made by the Superior Court; and also praying for further equitable relief. The lower Court issued a special injunction prohibiting payments out of the Fund until a decision on the merits could be made by the Superior Court, but refusing all the other equitable relief sought by the employer-complainants. From this special injunctive decree each side has appealed to this Court.

While the arguments covered a wide range, the basic issues involved are narrow: Has Equity jurisdiction, and if so, did the facts and the applicable principles of law warrant and justify the special injunctive decree made by the lower Court, or should the decree be reversed as the employes contend, or greatly broadened as the employers contend?

We adopt the following excerpts from the able comprehensive opinion of Judge NEELY speaking for the lower Court:

"This action in equity was instituted on the complaint of Westinghouse Electric Corporation and seventy-one other plaintiffs as employers and taxpayers subject to the Unemployment Compensation Law (Act of December 5, 1936, P. L. 2897, as amended, 43 P.S. 751, et seq.) and contributors to the Unemployment Compensation Fund. The defendants are the Secretary of the Department of Labor and Industry, the Executive Director of the Bureau of Employment Security within that Department, and members of the Unemployment Compensation Board of Review. In addition to these officials who are charged with the duty of administering the Unemployment Compensation Law, there is also joined as a defendant the State Treasurer who is custodian of the Unemployment Compensation Fund. Many employers intervened as parties plaintiff by agreement of all parties. Also, a number of employees intervened as defendants, as did also labor organizations and persons affiliated therewith.

"The complaint was filed on March 29, 1956, and on or about that date the plaintiffs advised the Court that, as

shown by their bill, they seek injunctive relief preliminary until hearing of the bill on its merits, and seek also other forms of temporary equitable relief. Upon examining the averments of the bill, the Court, counsel for plaintiffs and defendants being present, determined that a hearing on the application for preliminary injunction was required and set the date accordingly. The matter came on for hearing before the Court en banc on April 12, 1956. . . . The plaintiffs were represented by their counsel. The defendants were represented by the Attorney General through his deputies. There were numerous intervening plaintiffs and defendants who were also represented at the hearing by counsel. At this hearing testimony was taken and the matter is now before us on the question as to what extent, if any, the plaintiffs are entitled to special equitable relief at this stage of the proceeding.

"The nature of this proceeding can best be understood by considering the averments of the complaint. It is averred in substance that work stoppage occurred at the plants of the Westinghouse Electric Corporation in this Commonwealth due to a labor dispute; that after the stoppage had continued for a number of weeks a telegram was dispatched by the Governor to the Unions representing the employees as bargaining agents in the dispute, and to Westinghouse, wherein the Governor stated that a nationwide strike was in progress and proposed that the Unions and the Company 'submit their dispute to final and binding arbitration,' and that while the arbitration was in progress the employees should return to work. This telegram, according to the bill, was dispatched on December 19, 1955, and on the same day the Company notified the Governor of its refusal to accept the proposal. It appears in plaintiffs' pleadings that at least one of the two Unions acting in behalf of the employees did accept the proposal.

"The Department of Labor and Industry, then, according to the averments of the bill, acting through its Secretary and Executive Director of the Bureau of Employment Security, *issued a ruling dated February 17, 1956 to the effect that the work stoppage which had been a strike became a lockout on December 19, 1955, due to the acceptance of the*

Governor's proposal by the employees and the rejection thereof by the Company.[6]

"There is attached to the complaint a copy of the Department's so-called 'Lockout Ruling,' wherein it is set forth that under the provisions of the Unemployment Compensation Law, § 402(d), 43 P.S. 802 (d), *employees on strike are disqualified from unemployment compensation; but that this disqualification does not apply where there is a lockout.* It is alleged in the complaint that this so-called 'Lockout Ruling' of February 17, 1956 is invalid, and that claims for unemployment compensation in great numbers are now being illegally and unlawfully processed in the Department. It is specifically averred that determinations in a number of claims have been made by the Department, and there is attached to the complaint a copy of one such determination. It is averred that identical determinations have been made by the Department in 27 claims.

"It is averred that Westinghouse filed appeals with the Unemployment Compensation Board of Review from allowance of compensation in these 27 claims, but that if the decisions are affirmed by a Referee, and the Board on appeal affirms the Referee or fails to act within a period of thirty days of the action of the Referee, unemployment compensation will be immediately payable under the provisions of § 501 (e) of the Act, 43 P. S. 821 (e), notwithstanding any further appeal to the Superior Court. The complaint alleges that the Governor's proposal, followed by the Department's ruling, was coercive, in that it was sought to coerce a Pennsylvania employer to submit to compulsory arbitration in a labor dispute; that the Department's ruling, if not set aside, will result in an arbitary and unlawful payment from the Fund in an aggregate amount of $9,500,000, and the unlawful depletion of the Fund thereby.

"The plaintiff's prayer for relief is (1) that we mandatorily direct the defendants, John R. Torquato, Secretary of the Department of Labor and Industry, and A. Allen Sulcowe, Executive Director of the Bureau of Employment

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[6] Italics throughout, ours.

Security, to rescind and reverse the Department's ruling concerning the lockout; (2) that we enjoin these two defendants, their successors, agents and representatives from accepting, processing and proving any claim for unemployment compensation based upon that ruling; (3) that we enjoin the defendants, William J. Burchinal and Frank McLaughlin, members of the Board, their successors, agents and employees from processing, hearing or approving any claim for unemployment compensation; (4) that we enjoin the defendant, Weldon B. Heyburn, State Treasurer, from making or permitting the payment of any claim for unemployment compensation based upon the Department's ruling; (5) that we declare the Governor's proposal and the Department's ruling to be unconstitutional and void; (6) that we declare § 501 (e) of the Unemployment Compensation Law to be unconstitutional and void, to the extent that it requires the payment of unemployment compensation to be made to employees of Westinghouse before a decision of the Board and of the Superior Court; (7) that we grant such further equitable relief as may be required.

"To the complaint *preliminary objections* have been filed in the nature of (a) petition raising questions of jurisdiction, (b) demurrer, and (c) motion to strike off.

"Since the plaintiffs seek special equitable relief, we will discuss briefly the essential facts adduced at the hearing on April 12. Many of the facts are not in dispute.

"At this hearing a number of allegations in the complaint were read into the record as facts upon which this Court could determine the plaintiffs' right to special relief. We have discussed some of the allegations in the complaint, and to the extent that the references hereinabove made are to factual matters we adopt them as facts in the case.

"Admittedly, there was a work stoppage at the plants of Westinghouse. The Governor sent the telegram referred to in the complaint and the Department issued its ruling of February 17, 1956. In that ruling the Department pointed out that employees as a matter of law are disqualified from unemployment compensation where they are on strike, but that this disqualification does not apply where

there is a lockout. The Department then made its ruling in the following terms:

"RULING"

'Commencing as of December 27, 1955, the unemployment resulting from this dispute was not subject to disqualification under the provisions of Section 402 (d) of the Unemployment Compensation Law.'

"The effect of this ruling was to hold that as of December 27, 1955 what had theretofore been a strike became a lockout because of the company's rejection of the terms specified by the Governor in his telegram of December 19, 1955."

It is contended by plaintiffs that the rejection by Westinghouse of the Governor's telegram urging all parties to submit their dispute to final and binding arbitration cannot transform a strike into a lockout, nor constitute a legal basis for a ruling by the Department of Labor that a strike became a lockout because of the Company's refusal to agree to "final and binding arbitration" as urged by the Governor—citing *Morris Unemployment Compensation Case*, 169 Pa. Superior Ct. 564, 83 A. 2d 394; *Arbechesky Unemployment Case*, 174 Pa. Superior Ct. 217, 100 A. 2d 396; *Glen Alden Coal Co.* v. *Unemployment Compensation Board of Review*, 168 Pa. Superior Ct. 534, 79 A. 2d 796. This important issue is for the determination of the Superior Court if and when an appeal is taken to that Court.

The lower Court further said in its opinion:

"It has been developed that approximately 23,000 claims have been filed, and that the appeals from the Department's determinations in 27 of these claims have been referred to a Referee for decision, and it was represented to the Court that the Referee would proceed with his deliberations in the matter beginning April 16. It was conceded by all parties that the claims filed in behalf of each of these 23,000 persons must be treated as separate claims for each week, and that for a period of twelve weeks it would be necessary for the Department to process these many thousands of claims.

"At the conclusion of the hearing, argument was had and the plaintiffs contended that under the Unemployment Compensation Law any allowance of compensation would be payable, notwithstanding an appeal to the Superior Court to determine the eligibilty of employees to unemployment benefits. The plaintiffs argued that this Court should recognize that the 'Lockout Ruling' was unlawful, and that any administrative action predicated upon such ruling should be restrained, and that in effect we should restrain any administrative deliberations or activity in connection with the many claims that have been filed.

"The defendants, on the other hand, argued that this Court has no jurisdiction to pass judgment upon the question of benefit eligibility. They contended that the request here for equitable relief was premature, in that the plaintiffs had not yet been harmed by any ruling either by the Referee or the Unemployment Compensation Board of Review."

The Westinghouse Electric Corporation is a proper party plaintiff, not only as a contributor to the Unemployment Compensation Fund and therefore a taxpayer: *Pittsburgh Petition*, 376 Pa. 447, 450, 103 A. 2d 721; *Department of Labor & Industry* v. *New Enterprise Rural Electric Cooperative, Inc.*, 352 Pa. 413, 415-416, 43 A. 2d 90; *York School District Appeal*, 367 Pa. 279, 281-283, 80 A. 2d 803; *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 508; *Steward Machine Co.* v. *Davis, Collector of Internal Revenue*, 301 U.S. 548, 583; *Fidelity-Philadelphia Trust Co.* v. *Hines, Secretary of Labor & Industry*, 337 Pa. 48, 51, 10 A. 2d 553, 555; *Department of Labor & Industry* v. *New Enterprise Rural Electric Cooperative, Inc.*, 352 Pa. 413, 415, 416, 43 A. 2d 90, 91, 92; *Commonwealth* v. *Sun Ray Drug Co.*, 360 Pa. 230, 233, 234, 61 A. 2d 350, 351, 352; but also because its own reserve account will be charged with the payment of any unemployment benefits that are made and its present contribution rate thereby jeopardized. See §301 (c) of the Act, as last amended in 1955, Act No. 5, and §302 of the Act, 43 P. S. 782. Cf. *Bearing Service Company* v.

Unemployment Compensation Board of Review, 168 Pa. Superior Ct. 161, 77 A. 2d 713; *Commonwealth* v. *Sun Ray Drug Company*, 360 Pa. 230, 61 A. 2d 350; *Boyertown Burial Casket Co.* v. *Commonwealth*, 366 Pa. 574, 79 A. 2d 449.

Not only Westinghouse, but also all the other plaintiffs who contribute to the Unemployment Compensation Fund, have a property right therein which is entitled to protection, and for this reason and because they are taxpayers, have a status to maintain this suit. *Susquehanna Collieries Co.* v. *Unemployment Compensation Board of Review*, 137 Pa. Superior Ct. 110, affirmed in 338 Pa. 1, 11 A. 2d 880; *Page* v. *King*, 285 Pa. 153, 156, 131 A. 707, and cases above cited. See also: *Peoples Bridge Company* v. *Secretary of Highways*, 355 Pa. 599, 50 A. 2d 499; *Harris* v. *Philadelphia*, 299 Pa. 473, 149 A. 722; *Chrysler Corporation* v. *Smith*, 297 Mich. 438, 298 N. W. 87; *Carnegie-Illinois Steel Company* v. *Board of Review*, 117 Indiana App. 379, 72 N.E. 2d 662. Furthermore, it is certainly clear that irreparable damage would undoubtedly result if this special injunction were not granted.

We quote once again from the opinion of the lower Court:

". . . we will first give consideration to the request for equitable relief contained in paragraph (f) of the prayer of the complaint, which reads as follows:

> 'That the Court declare Section 501 (e) of the Act to be unconstitutional and void to the extent that it requires the payment of unemployment compensation to be made to employees of Westinghouse before a decision of the Board and of the Superior Court.'

"Claims for unemployment compensation growing out of the Westinghouse work stoppage have been filed by approximately 23,000 employees. As to 27 of these claims, the Department of Labor and Industry sent out a notice of determination in each case as follows:

Claims for weeks ending October 23, 1955 consecutively through December 26, 1955 are disapproved.

> The stoppage during the period October 17, 1955 to December 26, 1955, is determined to be a labor dispute other than a lockout and claimants are ineligible.

Claims for weeks ending January 2, 1956 consecutively through February 20, 1956, are approved.

> The stoppage commencing as of December 27, 1955 is determined to be a lockout and claimants are eligible.

'See also "Special Notice of Scope of Mass Claim Case" Attached.'

"Appeals from the determination in each of these 27 cases were taken by Westinghouse to the Unemployment Compensation Board of Review and referred by that Board to the Referee for decision.

"Under the provisions of §501 of the Act, 43 P.S. 821, when an application for unemployment compensation is filed, the Department must give notice to both the claimant and the employer concerning claimant's eligibility, and if eligible the weekly rate and maximum amount of compensation payable. The Department then is required to determine whether the claim is valid. And if the employer has filed with the Department within the required time pertinent information in writing raising any question concerning the eligibility of the claimant for compensation, appropriate notice in writing of its determination must then be given to the employer. It is provided in this section that as to any determination, unless either the claimant or the employer files an appeal with the Unemployment Compensation Board of Review within ten calendar days after the delivery of such notice, the determination of the Department shall be final and compensation paid or denied in accordance with that determination.

"Procedural due process is accorded to both the employer and the claimant in the above mentioned administrative procedures set forth in §501 of the Act. And, of course, it is recognized that due process of law in procedural matters is required in proceedings before administrative tribunals as well as before judicial bodies: ***Armour Transportation Company*** v. ***Pennsylvania Public Utility Com-***

mission, 138 Pa. Super, Ct. 243, 247 (1939); National Automobile Corporation v. Barfod, 289 Pa. 307, 311, 312 (1927).*

"Section 501 (e) of the Act, however, provides an administrative procedure that gives rise to the dispute in this case and is the basis for the prayer for special equitable relief at this time, as set forth in paragraph (f) of the prayer in the complaint. This section contains the following provision:

> '. . . Provided, That when the board affirms a decision of a referee or of the department allowing compensation, such compensation shall be paid notwithstanding any further appeal: And provided further, That when a referee affirms a decision of the department allowing compensation, in the event of a further appeal to the board, such compensation shall be paid after a period of thirty days from the date of such further apeal if the board has not rendered a decision prior thereto.'

"This proviso is clearly to the effect that compensation is immediately payable upon the affirmance of the Board; and is further payable within thirty days after the Referee affirms the decision of the Department awarding compensation if the Board does not take action within thirty days. This is the so-called 'double affirmation clause.' This 'double affirmation clause' *requires that payments be made forthwith without regard to judicial review* (§511, infra) when there are two findings in favor of claimants.

"Section 510 of the Act, 43 P.S. 830, provides that an aggrieved party, after exercising his remedies before the Board, may appeal to the Superior Court, *but that appeal* under the provisions of §511, 43 P.S. 831, *shall not act as a*

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* To these authorities we add: *Anderson National Bank* v. *Luckett*, 321 U.S. 233; *Dohany* v. *Rogers*, 281 U.S. 362; *Ballard* v. *Hunter*, 204 U. S. 241; *Union Trust Company of Pittsburgh Case*, 359 Pa. 363, 59 A. 2d 154; *Commonwealth ex rel. Chidsey* v. *Keystone Motor Casualty Co.*, 373 Pa. 105, 119, 95 A. 2d 664; *Narehood* v. *Pearson*, 374 Pa. 299, 304, 96 A. 2d 895; *Commonwealth ex rel. Chidsey* v. *Mallon*, 360 Pa. 606, 614, 63 A. 2d 49; *Shields* v. *Railroad Co.*, 305 U.S. 177.

supersedeas. Therefore, §501(e) of the Act provides that compensation shall be payable, notwithstanding an appeal to the Superior Court from the determination of the Board.

"There are two other sections of the Act that should be considered. Section 502, 43 P.S. 822, states that after hearings are concluded before the Referee, his decision 'shall be deemed the final decision of the board, unless within ten days after the date of such decision the board acts on its own motion, or upon application, permits any of the parties or the department to institute a further appeal before the board.' And §504 of the Act, 43 P.S. 824, provides:

> 'The board shall have power, on its own motion, . . . to remove, transfer, or review any claim . . . decided by, a referee, and in such case . . . may affirm, . . . the determination . . ., of the department or referee on the basis of the evidence previously submitted in the case. . . . .'

"The cumulative effect of these various statutory provisions is that compensation shall be payable on the basis of the administrative determination of these officials, regardless of any appeal pending in the Superior Court.

"The Superior Court, of course, is given the statutory jurisdiction on appeal to determine questions concerning unemployment benefit eligibility and has exercised that jurisdiction in a long line of cases. It would serve no useful purpose to do more than state that the books are full of Superior Court decisions deciding these questions. For example: Hall Unemployment Compensation Case, 171 Pa. Super. Ct. 127 (1952); Sopko Unemployment Compensation Case, 168 Pa. Super. Ct. 625 (1951); Silver Unemployment Compensation Case, 167 Pa. Super. Ct. 345 (1950); Tronieri Unemployment Compensation Case, 164 Pa. Super. Ct. 435 (1949); Boyertown Burial Casket Company v. Unemployment Compensation Board of Review, supra. Cf. Commonwealth of Pennsylvania v. Phoenix Iron Company, 62 Dauphin 77 (1951). And in determining the question of eligibility for unemployment compensation, that Court has had occasion to determine whether a work stoppage con-

stituted a lockout or strike; Burger Unemployment Compensation Case, 168 Pa. Super. Ct. 89 (1951); Hogan Unemployment Compensation Case, 169 Pa. Super. Ct. 554 (1951); P. McGraw Wool Co. v. Unemployment Compensation Board of Review, 176 Pa. Super. Ct. 9 (1954). [Morris Unemployment Compensation Case, 169 Pa. Superior Ct. 564].

"Our problem here in determining whether or not special equitable relief can now be awarded, in acordance with paragraph (f) of the prayer, is to determine whether the provision in §501 (e) of the Act, requiring the payment of compensation pending an appeal to the Superior Court, is valid. It is, of course, apparent that where the Board orders the payment of unemployment benefits, the Fund must be depleted to the extent of the payments pending the determination of the legal questions in the Superior Court, as would also the credit balance in an employer's reserve account. These payments having been made, the question as to whether or not the claimants-employees—are eligible to these benefits actually would be moot as to the payments already made when the case reaches the Superior Court. It is alleged that such is the case here, that payments to the extent of $9,500,000 could be withdrawn from the Fund without any judicial determination as to the propriety of such withdrawal. . . .

"We do not believe that it is consistent with due process of law to require the payment of claims during the very period of time when the eligibility of the claimants for unemployment compensation is being litigated. To do so, in effect, is to permit the administrative officials for all practical purposes to make a final determination without any adequate means for effective judicial review. We believe that substantial requirements of due process dictate that the status quo as to these payments be preserved until the Court which has statutory jurisdiction to determine the validity of these claims passes upon the legal questions involved."

We agree with the lower Court that the statutory provisions requiring payment of unemployment compensation prior to judicial review and prohibiting an appeal to the

(Superior) Court from acting as a supersedeas, violate the due process clause of the Constitution of the United States: *Porter, Auditor,* v. *Investors Syndicate,* 286 U. S. 461, 471; *Aircraft & Diesel Equipment Corp.* v. *Hirsch et al.,* 331 U. S. 752, 773; *Pacific Telephone & Telegraph Co.* v. *Kuykendall,* 265 U. S. 196, 201, 205; *Oklahoma Natural Gas Co.* v. *Corporation Commission,* 261 U. S. 290; *Chicago, Milwaukee and St. Paul Railway Co.* v. *Minnesota,* 134 U. S. 418, 456, 457; *Chrysler Corp.* v. *Appeal Board of Michigan Unemployment Compensation Commission,* 3 N. W. (2d) 302 (1942); *State ex rel. Campbell* v. *State et al.,* 57 N. E. (2d) 433 (Supreme Court of Indiana, 1944); *Dallas Fuel Co.* v. *Horne et al.,* 300 N. W. 303 (Supreme Court of Iowa, 1941).

In *Porter, Auditor,* v. *Investors Syndicate,* 286 U. S., supra, the Court said (pages 470, 471):

"Where as ancillary to the review and correction of administrative action, the state statute provides that the complaining party may have a stay until final decision, there is no deprivation of due process, although the statute in words attributes final and binding character to the initial decision of a board or commissioner. Pacific Live Stock Co. v. Lewis, 241 U. S. 440, 454. *But where* either *the plain provisions of the statute** (Pacific Tel. Co. v. Kuykendall, 265 U. S. 196, 203, 204) or the decisions of the state courts interpreting the act (Oklahoma Nat. Gas Co. v. Russell, 261 U. S. 290) *preclude a supersedeas or stay until the legislative process is completed by the final action of the reviewing court, due process is not afforded,* and in cases where the other requisites of federal jurisdiction exist recourse to a federal court of equity is justified."

In *Aircraft & Diesel Equipment Corp.* v. *Hirsch et al.,* 331 U. S. supra, the Court said (P. 773):

"It is true that the presence of constitutional questions, coupled with a sufficient showing of inadequacy of prescribed administrative relief and of threatened or impending irreparable injury flowing from delay incident to follow-

* Italics throughout ours.

ing the prescribed procedure, has been held sufficient to dispense with exhausting the administrative process before instituting judicial intervention."[38]

In *Chicago, Milwaukee and St. Paul Railway Co.* v. *Minnesota,* 134 U. S. supra, the Court said (pp. 456-457):

". . . In other words, although the railroad company is forbidden to establish rates that are not equal and reasonable, there is no power in the courts to stay the hands of the commission, if it chooses to establish rates that are unequal and unreasonable.

"This being the construction of the statute by which we are bound in considering the present case, we are of opinion that, so construed, *it conflicts with the Constitution of the United States* in the particulars complained of by the railroad company. *It deprives the company of its right to a judicial investigation, by due process of law,* under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice."

In *Pacific Telephone & Telegraph Co.* v. *Kuykendall,* 265 U. S., supra, the Court said (p. 201):

" 'If the commission shall at the conclusion of the hearing refuse to permit such increase, either in whole or in part, no supersedeas shall be granted in any action or proceeding brought to review the order of the commission pending

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[38] "Thus, the Court has permitted resort to a federal court of equity where a state was enforcing confiscatory rates and by its law precluded a stay or supersedeas until the state courts 'acting in a legislative capacity' had taken final action. Oklahoma Natural Gas Co. v. Russell, 261 U. S. 290; Pacific Tel. & Tel. Co. v. Kuykendall, 265 U. S. 196; Porter v. Investors Syndicate, 286 U. S. 461. For other decisions holding that a federal court may exercise its equitable jurisdiction where there is an inadequate state remedy to correct a constitutional wrong, see Hillsborough v. Cromwell, 326 U. S. 620; Wallace v. Hines, 253 U. S. 66."

the final determination of such action by the superior court, or, if appealed to the supreme court, by such supreme court.'

". . . The state statute forbidding a stay of proceedings until a final judicial decree was rendered, of course, could not prevent a federal court of equity from affording such temporary relief by injunction as the principles of equity procedure required. The conditions set out in the bill, therefore, seem to have made a case ripe for federal relief. Bacon v. Rutland R. R. Co., 232 U.S. 134; Prendergast v. New York Tel. Co., 262 U.S. 43, 48."

In *Chrysler Corp.* v. *Smith*, 298 N. W., supra, the Court said (p. 92):

"Claimants invoked that part of § 34 of the act, reading: 'Provided, That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid.'

"This, if held applicable in the instance at bar, would render administrative action superior to recognized judicial power in the premises and constitute the provisions relative to appeal and court procedure a nullity.

If construed, as applicable in this instance, it would render due process of law, expressly recognized and provided for in the [administrative provisions of the] act, nugatory and a senseless gesture."

* In *Chrysler Corporation* v. *Board*, 3 N. W. (2d), supra, the Court said (p. 304):

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* A contrary conclusion has apparently been reached in three jurisdictions, although it may be possible to distinguish those cases because of statutory or procedural and other differences: *Abelleira et al.* v. *District Court of Appeal*, 109 Pacific (2d) 942 (Cal. 1941); *Todd Shipyards Corporation et al.* v. *Texas Employment Commission et al.*, 245 S. W. (2d) 371 (Texas, 1951); *State ex rel. Aikens* v. *Davis*, 45 S. E. (2d) 486 (W. Va., 1947).

"Regardless of what useful and lawful purpose the double affirmation clause of section 34 of the Unemployment Compensation Act might serve under other circumstances, as claimants wish to have it applied in the instant case it is unconstitutional in that if so applied it would deprive plaintiff of due process of law.

* * *

". . . '*Unless there is a tribunal of a judicial character, there cannot be due process of law under the Fourteenth Amendment to the federal Constitution, nor within the meaning of state constitutions when justly construed.*' "

Our decisions hold that property rights which are jeopardized or denied by an administrative agency may be protected by a Court of equity. In *Harris* v. *State Board of Optometrical Examiners*, 287 Pa. 531, 135 A. 237, this Court, in considering a petition for a writ of mandamus to compel the State Board of Optometrical Examiners to issue a license, said (p. 534): ". . . The right of an optometrist, duly licensed, to conduct his business or practice optometry, is a property right protected by the Constitution: Dent v. W. Va.; 129 U. S. 114, 123, 124; Douglas v. Noble, 261 Pa. 165. *Where property rights, so secured, are unlawfully invaded by the legislature, directly or by one of its agents, the aggrieved person may appeal to the courts for redress.* This right had its inception in the Magna Charta."

In *Bell Telephone Company of Pennsylvania* v. *Driscoll et al.*, 343 Pa. 109, 21A, 2d 912, the Court said (p. 112):

"We have no doubt about the right of the Court of Common Pleas of Dauphin County in the exercise of its equitable powers to entertain a bill to enjoin an administrative agency of the Commonwealth from exercising powers not conferred on it or unconstitutionally conferred on it. That point has been decided too frequently to be longer in doubt: Martin v. Baldy, 249 Pa. 253, 259, 94 A. 1091; Germantown Tr. Co. v. Powell, 260 Pa. 181, 183, 103 A. 596; York Rys. Co. v. Driscoll, 331 Pa. 193, 196, 200 A. 864; W. Pa. Hospital v. Lichliter, 340 Pa. 382, 392, 17 A. 2d 206.

In *Soble et al.* v. *State Board of Pharmacy*, 49 Dauphin

145, (1940), that Court, in construing the Act of May 26, 1921, which gave the State Board of Pharmacy licensing powers but contained, as did the Banking Acts, no provision for an appeal, said (p. 150): "No appeal is given by this statute. Where property rights are involved, some method of review of the action of administrative officers or boards by a judicial tribunal must be afforded, otherwise there is no due process of law." **

It is clear from the foregoing cases, particularly the above quoted and cited cases of the Supreme Court of the United States, that a statutory provision which directs that unemployment compensation in large amounts shall be made to claimants before the validity of their claims to such payments are or may be determined by a Court—in this case the Superior Court of Pennsylvania—is a violation of the due process of law requirements of §1 of the Fourteenth Amendment of the Constitution of the United States and also of § 9 of Article I of the Constitution of Pennsylvania. Willcox v. Penn Mutual Life Insurance Company, 357 Pa. 581, 590-591, 55 A. 2d 521; Palairet's Appeal, 67 Pa. 479; Crawford Estate, 362 Pa. 458, 67 A. 2d 124.

The remaining question is whether Equity has jurisdiction and whether the relief granted by the lower Court sitting in Equity was proper and just.

This case does not involve the question or issue of whether the employes of Westinghouse are or are not entitled to unemployment compensation, nor the amount or

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** See footnote on next page.

** In Delaware County National Bank v. Campbell, 378 Pa. 311, 106 A. 2d 416, this Court allowed an appeal in the nature of a board certiorari from an Order of the Pennsylvania Banking Board approving a merger of a state bank with a national bank, and said (page 321), in a footnote:

"Administrative agencies have mushroomed in the last 20 years in number, growth and power, to such an extent that today they exercise considerable control not only over our property but also over our daily lives. In the light of these facts it is certainly desirable to have some judicial review over some of their judicial actions which so vitally affect the property and the basic rights of the people of Pennsylvania. Denial of any judicial review in such cases would at times result in a miscarriage of justice and in some cases a deprivation of due process."

merit of their claims. All of these are matters first for the Referee and the Unemployment Conpensation Board of Review and thereafter for the Superior Court of Pennsylvania. The sole issue in this case at this time is, we repeat, whether, *under all the facts admitted by the pleadings, and under the applicable principles of law,* a Court of Equity has jurisdiction and can properly and justly enjoin the payment of unemployment compensation prior to a decision (on the merits of these claims) by the Superior Court of Pennsylvania.

All of the (approximately) 276,000 claims for unemployment compensation will, if approved, total (according to the bill of complaint, which defendants demurred to) over $9,000,000. All of these claims, or a substantial number of them, could be paid under § 501 (e) of the Act and would likely be paid before a decision on the merits has been or could be made by the Superior Court. There may be no justiciable question before that Court if compensation has been paid prior to that Court's hearing and decision on the merits, and it is conceded that if unemployment compensation payments are made to the claimants they will never be recovered. Under such circumstances defendants' threatened actions are likely to produce irreparable harm unless a supersedeas or injunction is granted, and a supersedeas is prohibited by §511; see also §501(e). While the ultimate decision of the Superior Court on the merits will settle the question as to whether the work stoppage was a strike or constituted a lockout, the equitable relief granted by the Court below is the only effective method by which the constitutional rights of the plaintiffs can in the meantime be adequately protected.

Defendants contend that Equity has no jurisdiction for the two-fold reason (a) that the jurisdiction of a Court of Equity may not be invoked where there is an *adequate* remedy at law, and (b) it is an established general principle of law that where a remedy is provided by statute or otherwise it must be resorted to and pursued: *Collegeville* v. *Philadelphia Suburban Water Company*, 377 Pa. 636, 105 A. 2d 722; *Barth* v. *Gorson*, 383 Pa. 611, 119 A. 2d 309.

These are undoubtedly well recognized principles. However, defendants overlook the fact that it is equally well established that *a Court of Equity has jurisdiction and in furtherance of justice will afford relief if the statutory or legal remedy is not adequate, or if equitable relief is necessary to prevent irreparable harm: Duquesne Light Company* v. *Upper St. Clair Township*, 377 Pa. 323, 105 A. 2d 287; *Wood et al.* v. *Goldvarg*, 365 Pa. 92, 74 A. 2d 100; *Collersville* v. *Philadelphia Suburban Water Company*, 377 Pa., supra; *Gray* v. *Citizens' Gas Company*, 206 Pa. 303, 55 A. 1135; *Pennsylvania Railroad Company* v. *Bogert*, 209 Pa. 589, 59 A. 100; *Everett* v. *Harron*, 380 Pa. 123, 110 A. 2d 383; *Pennsylvania Company* v. *Franklin Fire Insurance Company*, 181 Pa. 40, 37 A. 191; Storey's Equity Juris., §33; *Adams* v. *New Kensington*, 357 Pa. 557, 560, 55 A. 2d 392.

In *Collegeville* v. *Philadelphia Suburban Water Co.*, 377 Pa., supra, the Court said:

"It has long been established that the jurisdiction of a court in equity may not be invoked where there is an adequate remedy at law, . . . When a statute provides a remedy by which a right may be enforced, no other remedy than that afforded by the statute can be used. . . .

"*However, equity will afford relief if the statutory remedy is not adequate or its pursuit would work irreparable harm:* Duquesne Light Company v. Upper St. Clair Township, 377 Pa. 323, 105 A. 2d 287; Wood et al v. Goldvarg, 365 Pa. 92, 74 A. 2d 100."

In *Pennsylvania R. R. Co.* v. *Bogert*, 209 Pa., supra, the Court said (p. 601): "The most comprehensive statement of the rule and the one which has been followed by this court ever since its announcement in 1850 by Judge King in Bank of Virginia v. Adams, 1 Parsons, 534, is as follows: 'To induce equity to refuse its aid to a suitor, it is not sufficient that he may have some remedy at law. *An existing remedy at law* to induce equity to decline the exercise of its jurisdiction is favor of a suitor *must be an adequate and complete one.* And when from the nature and

complications of a given case, its justice can best be reached, by means of the flexible machinery of a court of equity, in short where a full, perfect and complete remedy cannot be afforded at law, equity extends its jurisdiction in furtherance of justice.' " See also Bell Telephone Company v. Driscoll, 343 Pa. 109, 21 A. 2d 912, supra.

Equity likewise has jurisdiction to protect by injunction or appropriate remedy (a) property rights, and (b) personal rights "where a multiplicity of suits may be prevented or where a fundamental question of legal right is involved", and where the interests of justice require equitable relief: Everett v. Harron, 380 Pa., supra; *Oil City National Bank* v. *McClarmont*, 303 Pa. 306, 311, 154, A. 497; *Bell Telephone Co.* v. *Driscoll*, 343 Pa. 109, 21 A. 2d 912; *Poinaard* v. *Poinaard*, 117 Pa. Superior Ct. 313, 178 A. 308; *Lehigh Valley R. R.* v. *Graham*, 64 Pa. Superior Ct. 437, 450, 451.

It is clear from all of the authorities hereinabove cited or quoted that there is no merit in defendants' contention that equity is without jurisdiction.

The Unemployment Compensation Act has created an administrative agency to dispose of claims for unemployment compensation. The disposition of at least 27 of such claims is, as we have seen, now being considered by that agency, one of the defendants herein. While plaintiffs' contention, vis., that the administrative processing of these and 276,000 other claims for unemployment compensation (by employes of Westinghouse) should be restrained, is plausible, we do not believe that the refusal by the lower Court to restrain this processing constituted an abuse of discretion. On the other hand, defendants strenuously oppose any injunction, point-out, inter alia, the hardships and distress they will suffer by prolonged litigation, if their claims are decided to be just. Although it is indisputable that the law's delays almost always cause successful litigants severe economic hardship, the answer is not to short-circuit or violate the Constitution, but to expedite (by speed-up or elimination or otherwise) administrative procedure and the time for appeals. This can be further expedited by a test case.

The special injunctive decree issued by the lower Court maintains the status quo and protects and preserves the rights of all the parties, plaintiffs and defendants alike, until each claim for unemployment compensation is decided by the Superior Court on its merits and in accordance with the applicable principles of law. That decree, we repeat, protects the Fund but does not bar any employe from presenting a valid claim for unemployment compensation and having such claim decided specifically or by appropriate ruling by the Superior Court. This was fair and proper, clear and just.

Decree affirmed; each party to pay its, his and their respective costs.

APPENDIX "B"

Provisions of the Pennsylvania Unemployment Compensation Law, Act of December 5, 1936, as amended, 43 P.S. 751 et seq.

Sec. 3, 43 P.S. 752

Declaration of Public Policy.—Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of the Commonwealth. Involuntary unemployment and its resulting burden of indigency falls with crushing force upon the unemployed worker, and ultimately upon the Commonwealth and its political subdivisions in the form of poor relief assistance. Security against unemployment and the spread of indigency can best be provided by the systematic setting aside of financial reserves to be used as compensation for loss of wages by employes during periods when they become unemployed through no fault of their own. The principle of the accumulation of financial reserves, the sharing of risks, and the payment of compensation with respect to unemployment meets the need of protection against the hazards of unemployment and indigency. The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this Commonwealth require the exercise of the police powers of the Commonwealth in the enactment of this act

for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

Sec. 4 (y), 43 P.S. 753

"Wages of a compensated employe" means the first one thousand three hundred and sixty-six dollars ($1366) in wages which were paid to a compensated employe by each of such compensated employe's employers during the base year immediately preceding the employe's benefit year and which wages shall be treated as though they had been paid in the calendar quarter in which that amount of compensation was paid, which together with any amounts of compensation previously paid with respect to such benefit year, equals at least three times the employe's weekly benefit rate. For the purpose of charging an employer's reserve account under the provisions of subsection (b) of section 302 of this act, "wages of compensated employes", as used therein, shall not include wages which were the basis of credit for a waiting week, or for the payment of unemployment compensation, or both, as a result of any employe being unemployed under conditions which under subsection (d) of section four hundred two of this act as amended by the act approved the thirtieth day of June, one thousand nine hundred forty-seven (Pamphlet Laws 1186) would have made him ineligible for compensation, providing any such employer within sixty days from the date of mailing notice of his contribution rate for the year one thousand nine hundred forty-nine, as computed under the provisions of section three hundred one, as amended by this act, files an appropriate application with the department, giving sufficient information to enable the department to determine whether or not his "wages of compensated employes" should be adjusted under the provisions of this subsection. If, however, any such employe after the termination of the conditions above mentioned and in the same benefit year was paid compensation equal to at least three times his weekly benefit rate, then the

"wages of a compensated employe" which were the basis thereof shall be included in the "wages of compensated employes" for the employer for the same calendar quarter to which such wages were originally allocated by the department: Provided, That the provisions of this subsection shall not result in the removal or transfer of any "wages of a compensated employe" for any calendar quarter to which such "wages" were originally allocated by the department in determining "state experience" as defined in subsection (s) of section four of this act.

Sec. 301, 43 P.S. 781

Contributions by Employers; Experience Rating.—

* * * * * * *

(e) (2) The department shall promptly notify each employer of his rate of contribution for the calendar year, determined as provided in this section. The determination of the department of the employer's rate of contribution shall become conclusive and binding upon the employer, unless within ninety (90) days after the mailing of notice thereof to the employer's last known post office address the employer files an application for review, setting forth his reasons therefor: Provided, That if the department finds that because of an error of the department it has notified an employer that his rate of contribution is more than the rate to which he is entitled, the department shall, within one year from the date of such notice, adjust the rate of contribution. The department may, if it deems the reasons set forth by the employer insufficient to change the rate of contribution, deny the application, otherwise it shall grant the employer a fair hearing. The employer shall be promptly notified of the denial of his application or of the department's redetermination, both of which shall become final and conclusive within thirty days after the mailing of notice thereof to the employer's last known post office address, unless the employer shall appeal by petition

from the action of the department to the Court of Common Pleas of Dauphin County within such time.

(f) The petition filed in the Court of Common Pleas of Dauphin County shall set forth the reasons why the employer deems the rate of contribution determined by the department is incorrect. No questions shall be raised in any such petition, except such as were set forth in the application for review and redetermination by the department. A copy of the petition shall be served on the secretary or his deputy. The court shall fix a time for hearing the petition, and after hearing shall enter such order affirming or changing the rate of contribution determined by the department as to it appears just and proper. From the decision of the court, an appeal may be taken by the department or the employer to the Supreme or Superior Court as in other cases.

Sec. 302, 43 P.S. 782

Establishment and Maintenance of Employer's Reserve Accounts.—

* * * * * * *

(f) Subsequent to June thirtieth, one thousand nine hundred forty-nine, such account shall be charged with all compensation, by even dollars, paid to each individual who received from such employer wage credits constituting the base of such compensation, in the proportion that such wage credits with such employer bears to the total wage credits received by such individual from all employers: Provided, That if the department finds that such individual was separated from his most recent work for such employer due to being discharged for willful misconduct connected with such work, or due to his leaving such work without good cause attributable to his employment, thereafter no compensation paid to such individual with respect to any week or unemployment occurring subsequent to such separation, which is based upon wages paid by such employer with respect to employment prior to such separation, shall

be charged to such employer's account under the provisions of this subsection (f); provided, such employer has filed a notice with the department in accordance with its rules and regulations and within the time limits prescribed therein. The findings and determinations of the department under this subsection (f) shall be subject to appeal in the manner provided in this act for appeals from determinations of compensation. The provisions of this subsection (f) as hereby amended shall become effective with respect to charges arising out of any benefit year which commences after the thirtieth day of September, one thousand nine hundred fifty-one.

Sec. 501 (e), 43 P.S. 821

Unless the claimant or last employer or base-year employer of the claimant files an appeal with the board, from the determination contained in any notice required to be furnished by the department under section five hundred and one (a), (c) and (d), within ten (10) calendar days after such notice was delivered to him personally, or was mailed to his last known post office address, and applies for a hearing, such determination of the department, with respect to the particular facts set forth in such notice, shall be final and compensation shall be paid or denied in accordance therewith. In the event that an appeal is filed with the board, the payment of any contested amount of compensation shall be withheld pending determination of the claim, but any uncontested amount of compensation allowed in any decision shall be paid notwithstanding any appeal which may thereafter be taken: Provided, That when the board affirms a decision of a referee or of the department allowing compensation, such compensation shall be paid notwithstanding any further appeal. And provided further, That when a referee affirms a decision of the department allowing compensation in the event of a further appeal to the board such compensation shall be paid after a period of thirty days from the date of such further appeal if the board has not rendered a decision prior thereto.

Sec. 502, 43 P.S. 822

Decision of Referee; Further Appeals and Reviews.—

Where an appeal from the determination or revised determination, as the case may be, of the department is taken, a referee shall, after affording the parties and the department reasonable opportunity for a fair hearing, affirm, modify, or reverse such findings of fact and the determination or revised determination, as the case may be, of the department as to him shall appear just and proper. The parties and the department shall be duly notified of the referee's decision, and the reasons therefor, which shall be deemed the final decision of the board, unless within ten days after the date of such decision the board acts on its own motion, or upon application, permits any of the parties or the department to institute a further appeal before the board. A memorandum of testimony of any hearing before any referee shall be made and be preserved for a period of two years.

Sec. 510, 43 P.S. 830

Appeals to Superior Court.—An appeal to the Superior Court may be taken by the department or by any party claiming to be aggrieved, but only after such appellant has exhausted its remedies before the board. In any such appeal the board shall be made the party defendant. Every appeal to the Superior Court must be taken within thirty days after the decision of the referee or board becomes final. The appeal shall be by petition and shall state the grounds upon which a judicial review is sought. A copy of such appeal petition shall be served upon a member or agent of the board, and sufficient additional copies shall be left with the board to enable the board to furnish a copy to every party in interest in the proceeding who has not joined in the appeal. The board shall file an answer in the Superior Court within thirty days after the petition has been served on it, and shall at the same time file

with the court certified copies of all documents and papers, a record of all testimony taken and all findings of fact and decisions thereon. The board may also, in its discretion, certify to such court questions of law involved in any decision by it.

Sec. 511, 43 P.S. 831

Exceptions and Bond Not Necessary.—No Supersedeas to be Granted.—In order to take an appeal to the Superior Court, it shall not be necessary to enter exception to the rulings of the board, and no bond shall be required for entering an appeal. No appeal to the Superior Court shall act as a supersedeas.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

NO. 669

CLYDE J. BOWMAN, BERTRAND HOFFMAN, EUGENE DYLL, and PENNSYLVANIA C.I.O. COUNCIL, *Petitioners,*

v.

PENNSYLVANIA STATE CHAMBER OF COMMERCE, et al., *Respondents.*

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania (Appendix A to Petition) is now officially reported at 386 Pa. 306. The opinion of the Court of Common Pleas of Dauphin County appears in 69 Dauph. 136.

QUESTIONS PRESENTED

1. Whether the decision below is based on adequate nonfederal grounds?

2. Whether the decision below contravenes any established federal unemployment compensation policy?

STATEMENT

This litigation involves the validity of provisions of the Pennsylvania Unemployment Compensation Law under which payments of compensation are made mandatory without an opportunity for judicial review. Although an appeal is allowed to the Pennsylvania Superior Court, the statute directs payment, notwithstanding an appeal, on two administrative determinations that the compensation is payable. The statute also provides that no appeal to the Superior Court shall act as a supersedeas. The applicable provisions of the statute are set forth in the margin.[1]

The Pennsylvania Supreme Court, affirming the Dauphin County Court, has held that, under the circumstances of this case, these statutory provisions violate due process under both the Pennsylvania and the Federal Constitutions and contravene an established Pennsylvania policy that administrative action is always subject to judicial review where property rights are involved.

Under the Pennsylvania Unemployment Compensation Law employees are ineligible for compensation when their unemployment is due to a labor dispute other than a lockout.

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1. Section 501(e) of the Unemployment Compensation Law, Act of December 5, 1936, P.L. [1937] 2897, 43 P.S. § 821(e), provides in part:

> ". . . Provided, That when the board affirms a decision of a referee or of the department allowing compensation, such compensation shall be paid notwithstanding any further appeal: And provided further, That when a referee affirms a decision of the department allowing compensation, in the event of a further appeal to the board, such compensation shall be paid after a period of thirty days from the date of such further appeal if the board has not rendered a decision prior thereto."

Section 511 of this Act provides in part:

> ". . . No appeal to the Superior Court shall act as a supersedeas."

Statement.

In October 1955 a walkout over a labor dispute occurred at nearly all the plants of the Westinghouse Electric Corporation. (R. 103a) The dispute was not finally settled until March 1956.

In December 1955 the Governor of Pennsylvania sent telegrams to the President of the International Union of Electrical Workers and the Chairman and President of Westinghouse, urging that they submit the labor dispute to final and binding arbitration. (R. 104a) The Governor's proposal was promptly accepted by the President of the Union. (R. 106a) It was rejected by the Chairman and President of Westinghouse. (R. 105a)

On February 17, 1956 the Bureau of Employment Security issued a ruling that the refusal by Westinghouse to submit the labor dispute to final and binding arbitration converted, what had been up to that time a strike, into a lockout, thereby making eligible for compensation approximately 23,000 Pennsylvania employees of Westinghouse. (R. 111a, 114a) If payment should be made to all of them for the entire period for which the ruling removed their ineligibility, in excess of $9,000,000 might be paid out of the Unemployment Compensation Fund without an opportunity for a judicial review of the validity of the ruling.

On March 29, 1956, 72 Pennsylvania employers, who are taxpayers and contributors to the Unemployment Compensation Fund, instituted an equity action in the Dauphin County Court asking that the ruling of the Bureau be declared erroneous and that in any event an injunction be granted against the payment of compensation until after review by the Superior Court of a final administrative determination of the issue of eligibility.

The Dauphin County Court refused to pass upon the validity of the ruling, but granted the injunction. The Supreme Court of Pennsylvania affirmed.

ARGUMENT

I.

The Decision Below Rests on Adequate Nonfederal Grounds.

It is true that the Pennsylvania Supreme Court has indicated that in certain circumstances the Pennsylvania due process clause has substantialy the same meaning as the due process clause in the Fourteenth Amendment, and it would be unrealistic to pretend that the decisions of the Supreme Court of the United States have had no influence on Pennsylvania's interpretation of its own due process clause. See *Philadelphia Gas Works v. City of Philadelphia,* 331 Pa. 321, 357, 1 A.2d 156, 172 (1938). For that reason it has become the habit of Pennsylvania lawyers as well as our courts in due process cases to cite decisions of the Supreme Court of the United States as well as decisions of the Supreme Court of Pennsylvania.

But it is obvious from a reading of the opinions below that the decision would have been the same without the Fourteenth Amendment.

The concluding paragraph of that part of the opinion below dealing with the constitutional question appears in 386 Pa. at 326-327, Brief for Petitioners, p. 35, as follows:

> "It is clear from the foregoing cases, particularly the above quoted and cited cases of the Supreme Court of the United States, that a statutory provision which directs that unemployment compensation in large amounts shall be made to claimants before the validity of their claims to such payments are or

may be determined by a Court—in this case the Superior Court of Pennsylvania—is a violation of the due process of law requirements of § 1 of the Fourteenth Amendment of the Constitution of the United States and also of § 9 of Article I of the Constitution of Pennsylvania. Willcox v. Penn Mutual Life Insurance Company, 357 Pa. 581, 590-591, 55 A.2d 521; Palairet's Appeal, 67 Pa. 479; Crawford Estate, 362 Pa. 458, 67 A.2d 124."

Earlier in the opinion (386 Pa. at 321, Brief for Petitioners, pp. 30-31) the Court stated that the statutory provisions requiring payment of unemployment compensation prior to judicial review and prohibiting an appeal to the Superior Court from acting as a supersedeas violate the due process clause of the Constitution of the United States. It cited several decisions of the Supreme Court of the United States. Clearly, however, it cannot be said that the Court regarded these decisions as controlling. The Court relied most heavily on *Chrysler Corp. v. Smith,* 297 Mich. 438, 298 N.W. 87 (1941), cert. den. 317 U.S. 635 (1942), and a subsequent decision by the Supreme Court of Michigan in *Chrysler Corp. v. Unemployment Compensation Commission,* 301 Mich. 351, 3 N.W.2d 302 (1942), holding unconstitutional similar provisions in the Michigan Unemployment Compensation Law. The Michigan Court similarly rested its decision on parallel due process clauses in the Michigan and Federal Constitutions, and, nevertheless, this Court denied certiorari.

Finally the court below relied on a line of Pennsylvania cases establishing the fundamental right, regardless of the Federal Constitution, to a judicial review of

actions by state administrative tribunals affecting property rights. At 386 Pa. at 325, Brief for Petitioners, 34, the Court said:

> "Our decisions hold that property rights which are jeopardized or denied by an administrative agency may be protected by a Court of equity. . . . 'This right had its inception in the Magna Charta.' " [*Harris v. State Board of Optometrical Examiners,* 287 Pa. 531, 135 Atl. 237]

Obviously this court could not reverse the state judgment. The most it could do would be to render an advisory opinion correcting the state court's views as to the Fourteenth Amendment. *Herb v. Pitcairn,* 324 U.S. 117, 125-6.

II.

The Decision Below Does Not Contravene Any Established Federal Unemployment Compensation Policy.

Petitioners argue that the decision below denies them the right to a "speedy" determination of their eligibility for unemployment compensation benefits, which means a determination without the delay involved in a judicial review. They claim that this right can be found in a federal unemployment compensation policy.

In 1935 Congress undertook to encourage the enactment of state unemployment compensation laws by imposing on all employers of eight or more employees a payroll tax of 3 per cent and provided that any state which would enact a law meeting certain minimum standards would be entitled to a credit of 2.7 per cent.

The remaining .3 per cent would be held by the Federal Government and distributed to the states for administrative purposes.

The minimum standards have nothing to do with, and do not even suggest, a policy regarding provisions in the state laws regarding eligibility for benefits or procedures for the determination of contested cases.[1] A state is given complete freedom to develop its own type of unemployment compensation system. *Steward Machine Company v. Davis*, 301 U.S. 548, 595; *Carmichael v. So. Coal & Coke Co.*, 301 U.S. 495, 526; and Parker, *Administrative Law Problems in the Unemployment Insurance Program*, 8 Vand. L. Rev. 436, 439 (1955).

The Secretary of Labor of the United States certified approval of the Pennsylvania law on December 31, 1956, some three months after the Pennsylvania Supreme Court's decision in the present case. 21 Fed. Reg. 163 (1957).

The speed with which the state's courts and administrative agencies process their contested cases is, perhaps unfortunately, a matter over which this Court

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1. There are only two sets of federally prescribed standards which state legislation must meet: (1) Section 3304 of the Internal Revenue Code sets out specifications which state legislation must meet in order that an employer may deduct from his federal tax return unemployment taxes paid to the state. Section 3305 of the Internal Revenue Code requires the Secretary of Labor to certify to the Governor of every state on December 31 of each year whether his state meets these qualifications. (2) Title III of the Social Security Act provides federal standards which the state must meet in order to obtain grants-in-aid for the administration of their unemployment compensation plan.

has no control. The solution of the problem of excessive delays in the administration of justice is presently receiving wide attention. But those who 20 years ago felt that the administrative agency offered a solution have become sadly disillusioned by experience. And the way, in Pennsylvania, to speed up the disposition of contested unemployment compensation cases is not to eliminate the judicial review at the end of the procedural line, but to eliminate at least one of the procedural steps at the administrative level and speed up the others.[2] As the court below said (386 Pa. at 330, Brief for Petitioners, p. 38):

> ". . . Although it is indisputable that the law's delays almost always cause successful litigants severe economic hardship, the answer is not to short circuit or violate the Constitution, but to expedite (by speed-up or elimination or otherwise) administrative procedure and the time for appeals. . . ."

---

2. In the present case the Common Pleas Court of Dauphin County and the Supreme Court of Pennsylvania heard arguments and rendered carefully considered opinions in less time than it took to complete one step in the administrative processing of the Westinghouse claims. Although the decision of the Bureau was appealed on March 5, 1956 (20 days before the action was started in Dauphin County), the referee to whom the case was referred did not render a decision until October 15, 1956 (15 days after the Supreme Court's decision). To date, the claims are still pending before the Unemployment Compensation Board and are undecided. In fact, the Board has not yet fixed a date for hearing.

III.

Conclusion.

It is respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

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